IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1101 OF 1992

Hansant Maniklal Savani Applicant

versus

Vyankatesh Tukaram Kota & others Respondents

Shri J.J.Chandrashekharan i/by Shri G.V.Parmar for applicant.

Shri Vijay Killedar i/by Nitin Jamdar for respondent no.1.

Shri K.V.Saste, APP for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th December 2005

PC :

1. The petitioner-original accused no.5 approaches this Court under section 482 of the Code of Criminal Procedure for quashing of Criminal Case No.8/1992 pending in the Court of JMFC, Solapur. The first respondent is the original complainant.

2. The petitioner is original accused no.5. He is partner of M/s.Savani Carrying Corporation, which is a partnership firm. The said firm is an

associate of Savani Transport Ltd. carrying on business of transportation of goods by road on All India basis. It has branches at several places in India. The present complaint is instituted by first respondent who is residing at Solapur. Therefore, the depot/branch of the said firm at Solapur is concerned with the subject matter of the complaint.

3. Shri Chandrashekharan appearing for the petitioner contends that on a reading of the complaint it is apparent that it does not disclose any offence muchless an offence of criminal breach of trust. He submits that as far as carrier is concerned, the offence is covered by Section 407 of the Penal Code. However, as far as present applicant is concerned, neither the property is entrusted to him nor he has dishonestly misappropriated or dishonestly disposed off the same. On the other hand, the complaint allegations read as a whole would reveal a case where the complainant himself is guilty of suppression of material facts. The complainant is fully aware that goods entrusted to accused no.1 at the Solapur depot/branch of the firm, have in fact been delivered to the consignee. That the goods were put in transit,

that they were so delivered, is clear from a perusal of the complaint itself and more particularly a letter addressed by one Al-Exim International dated 25th October 1990 (Exhibit-F) as well as legal notice addressed by the complainant's advocate on 12th September 1991. He submits that if the complaint as well as these materials are perused, it is clear that the complainant cannot allege criminal breach of trust on the part of present applicant. He has also invited my attention to the letter dated 20th April 1991 (Exhibit-D) addressed by the complainant to the firm Savani Carrying Corporation.

4. In support of the above contentions strong reliance is placed by Shri Chandrashekharan on a decision of Supreme Court reported in AIR-1953-SC-478 (Chelloor Mankkal Narayan Ittiravi Nambudiri Vs. State of Travancore Cochin). He also places strong reliance upon a decision of this Court reported in 1978-BLR-677 (C.S.Umralkar Vs. Rajkumar Agarwal). He also referred to another decision of a Single Judge reported in 1991(3)-Bom.C.R.-86 (Iqbal Singh Keer Vs. Shekharappa C. Nagathan and another).

5. On the other hand, Shri Killedar appearing for the original complainant states that this Court's jurisdiction under section 482 is limited. This Court cannot rely upon additional materials but must satisfy itself on the basis of the averments in the complaint as to whether an offence is disclosed or not. If it is so disclosed, then merely because additional materials are being produced, does not mean that this Court should interfere and quash the criminal proceedings.

6. With the assistance of learned counsel for the parties, I have perused the complaint. The complaint clearly alleges that it was the accused nos.1, 2 and 4 acting as Branch Managers at Solapur, Calcutta and Vijaywada while accused no.3 was working as Clerk. The only averment as far as present petitioner is concerned, is that he is Managing Partner of Savani Carrying Corporation. I have perused the relevant averments. It has been very clearly stated that the entrustment, if any, is to the accused no.1. If that is the position, then as to how in para no.9 of the complaint the averment could be made as far as misappropriation by the present applicant is not clear to me at all. The

averment that there is a criminal conspiracy to misappropriate the machines, is also not substantiated by anything beyond stating that the applicant is the Managing Partner of the firm. The complaint averments have been perused by me in their entirety. On a reading thereof itself it is apparent to me that the offence alleged u/s 407 is not made out against the applicant herein. Even if the materials other than the complaint are not to be looked into, even then this plea is substantiated. Additionally, it is apparent that the complainant refers to letters addressed and a reply dated 9th May 1991 from accused no.5. The notice dated 11th July 1991 addressed by the complainant himself is preceded by his letter dated 20th April 1991. This letter is marked to one N.M.Savani. In that letter, in para no.2, the complainant has specifically stated that the consignment has been delivered. The consignment note is relied upon. It is alleged that the Culcatta Office of the firm has without presentation of the consignment note, handed over the delivery.

7. Upon reading of the aforesaid materials it is apparent that the complaint does not disclose any offence muchless an offence u/s 407 on the part

of the applicant. The principles culled out in the aforesaid decision of Supreme Court (AIR-1953-SC-478) are clear in their application. For constituting an offence of criminal breach of trust, the sufficient ingredients must be set out and thereafter proved. It is not as if by making vague averments and some general remarks, that an offence can be made out.

8. In the aforesaid circumstances, this is a fit case where the complaint should be quashed at the instance of applicant-accused no.5. Rule is accordingly made absolute in terms of prayer clause (a). However, it is clarified that the complaint is quashed as far as applicant-accused no.5.

(S.C.DHARMADHIKARI, J.)